

REMARKS

Claims 21, 22, 24-27, 29 and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksson, Bemmer and Barany. Applicant respectfully traverses this rejection.

Eriksson discloses a method wherein flexibly configurable layer one transport channels produce radio blocks in response to communication information and extract communication information from radio blocks. One of the transport channels can be enabled to extract its associated communication information from a radio block while another of the transport channels is maintained disabled.

Bemmer teaches a method for adapting the mode of operation of a multi-mode codec to the changing conditions of radio transmission in a CDMA mobile radio network

Barany teaches a communications network that includes a data network coupled to a wireless access network and other devices. The wireless access network enables access by mobile stations of the data network. Each mobile station, and optionally, one or more of other devices coupled to the data network, contains an adaptive multi-rate codec (coder/decoder) that can be set to operate at a plurality of rates.

It is clear that the Examiner is merely selecting elements claimed in the present invention from various references and rejecting the claims using improper hindsight.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching requirement as a guard against using hindsight in an obviousness analysis). The teaching, suggestion, or motivation must be found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

The Examiner is using the motivation that the proposed combination would have been obvious “to improve the quality of transmission IP packet.” Applicant suggests that this is not appropriate motivation in that it is always the object when transmitting IP packets to improve the quality of the transmission. Therefore, the Examiner has not provided any actual motivation found either implicitly or explicitly in the prior art or in the knowledge of one skilled in the art.

Furthermore, the only evidence that such a combination would improve the quality of transmission is in the current specification. Therefore, the Examiner is using the specification as roadmap to reject the claims of this application. Such a rejection is based on improper hindsight.

Applicant contends that since claims 21, 22, 24-27, 29 and 39 are not anticipated nor render obvious, the present rejection should be withdrawn and the claims allowed.

Applicant appreciates the indication that claims 23 and 38 contain allowable subject matter.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

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